IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2172 of 2006
With
SPECIAL CIVIL APPLICATION No. 2177 of 2006
With
SPECIAL CIVIL APPLICATION No. 2180 & 2181 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYURKUMAR RAMJIBHAI BHUVA - Petitioner(s)
Versus
SANCHALAKSHRI -MANAV SAMAJ SEVA TRUST & 2 - Respondent(s)

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Appearance :

SCA No. 2172 of 2006

MR JV JAPEE for Petitioner(s) : 1,
Mr K P Rawal, AGP for respondent no.3

SCA No. 2177, 2180 & 2181/2006

Mr JV Japee for petitioner

Ms. Archana Raval, AGP for respondent no.3.

None for Respondent(s) : 1 - 2.

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/07/2006

ORAL (COMMON)JUDGMENT

1. The petitioners have invoked Article 226 of the Constitution to challenge the order dated 10.05.2005 of the Gujarat Secondary Education Tribunal without any satisfactory explanation about the delay in filing or moving the petition. In fact, since the petitioners' grievance has already been adjudicated by a quasi-judicial forum, the petition could more properly have been filed and entertained under Article 227 of the Constitution. Although all the petitions were argued as being identical, it was conceded that differences in facts were required to be verified.

2. The basic undisputed fact was that the petitioners' appointment as teachers were found to be illegal and were found to have been obtained by fraud resulting into issuance of instructions from the office of the Commissioner of Schools to terminate their services. The Tribunal held that the

appointments were obtained by fraud and hence the provisions of section 36 of the Gujarat Secondary Education Act, 1972 requiring the school to conduct an enquiry were not applicable. However, since no reasonable opportunity of hearing was afforded to the petitioners, the Tribunal disposed of the applications with a direction to the Commissioner of Schools to issue show cause notice within 15 days along with the material relied upon against the petitioners and, after hearing them, to pass within 15 days reasoned orders in accordance with Rules. It is further directed that, if the certificates of the applicants were found to be genuine, the Commissioner should pass orders regarding releasing grant for their salaries and the school concerned may restore the petitioners in active service.

3. The grievances made on behalf of the petitioners, without revealing the steps taken pursuant to the impugned order in the last more than 13 months, were that the petitioners were not immediately ordered to be reinstated and that the school authorities were required to be ordered to

hold the enquiry into genuineness of the certificates obtained and submitted by the petitioners for the purpose of employment. The learned counsel relied upon the judgment dated 1.4.2005 of this Court in Special Civil Application No.1405 of 2005 wherein pending enquiry, the petitioner therein was ordered to be reinstated in service.

4. Not only that the petitions appear to have been pursued without due perseverance, but they appear to have been moved now with the ulterior motive of frustrating the impugned order long after it ought to have been fully implemented. The grievance of the petitioners about violation of the principles of natural justice was in respect of the order of the Commissioner of schools and, therefore, it was directly sought to be redressed by the impugned order by directing the Commissioner of schools to give to the petitioners an opportunity of being heard.

5. The Supreme Court has, recently in ***Canara Bank v. V K Avasthy (AIR 2005 SC 2090),*** categorically held

in para 16 as under:

> "Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not determined."

6. Following the above declaration of law, the Tribunal appears to have adopted an absolutely correct and expeditious course by ordering the Commissioner of Schools to immediately hold an enquiry and has left open even the issue of reinstatement and payment of wages so as to avoid any further litigation. Surprisingly, the petitioners have clearly either suppressed the facts of subsequent developments, or already taken benefit of the order; but, admittedly, not approached any authority for the purpose of implementation of the order which could have provided them with immediate opportunity of hearing and relief, if they deserved it. Therefore, filing of the petitions is found to be lacking in *bonafides* and an attempt at abusing

the process of Court. Therefore, the petitions are dismissed *in limine.*

[D. H. Waghela, J.]

msp